EQUITABLE RELIEF GRANTED BY THE SECRETARY OF VETERANS AFFAIRS IN CALENDAR YEAR 2000

Case #1

The Servicemember has served honorably in the Coast Guard from July 12, 1982, to present day. He participated in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) from 1982 to 1989, when the VA refunded his money to him. He attempted to reopen the account in 1990 and 1996 without success. In July 1996, he was informed that he could reopen the account, but due to a delay on the part of Coast Guard personnel in getting guidance on Public Law 104-275, he was unable to get the account re-established from July through September.

Public Law 104-275 was passed on October 9, 1996, authorizing certain VEAP participants to elect education benefits under the Montgomery GI Bill - Active Duty (MGIB) program. These individuals had to be serving on active duty on October 9, 1996, make an election to receive MGIB benefits and provide the $1,200.00 necessary to become eligible for that entitlement, and, most telling in this servicemember's case, must have been a participant in the VEAP on October 9, 1996.

According to the Commander of the Thirteenth Coast Guard District, the servicemember was incorrectly advised as to the application of P.L. 104-275 to his situation and was unable to re-establish the VEAP account as a result. The Secretary granted equitable relief under 38 U.S.C. § 503(a), allowing the servicemember one year to contribute $1,200.00 and be considered eligible for the MGIB program.

Case #2

The Officer was advised during his Officer Candidate School training that he did not qualify for the Montgomery GI Bill - Active Duty (MGIB) program because he was an officer. Because of this erroneous information provided by the U.S. Navy, he declined participation in the MGIB program. He later learned that officers were entitled to participate in the MGIB program. He appealed to the Board of Correction of Naval Records to withdraw his declination. The Board determined that the evidence sufficiently demonstrated that the officer should have been allowed to enroll in the MGIB. VA determined him to be eligible for MGIB benefits based on the Board's findings.

The enrollment certificate received on February 18, 1999, certified training taken in 1996. VA regulations, at that time, prohibited payment of benefits more than one year prior to date of receipt of the application or enrollment certification, whichever was received later. Benefits for flight training taken in 1996 were denied. The Secretary granted equitable relief under 38 U.S.C. § 503(a) in the amount of $4,110.00, the amount that the officer would have received for his training taken in November 1996 under the MGIB program.

Case #3

The Servicemember served on active duty from March 2, 1983, through May 1, 1992. He was released from active duty under the Voluntary Separation Incentive Program (VSI). Under P.L. 102-484, enacted on October 23, 1992, he was eligible to elect to participate in the Montgomery GI Bill (MGIB) program. He had one year from the date of enactment to elect enrollment in the MGIB program. VA received his election on October 25, 1993, and disallowed his claim for MGIB benefits based on the fact that the election was not timely received. The servicemember appealed this decision.

On October 20, 1997, the Board of Veterans' Appeals (BVA) determined that the veteran's election was timely filed. The statute specified that the election must be made within one year from the date of enactment. The one year period ended on October 23, 1993, which was a Saturday. The regulations specify that when a date falls on a non-workday, the next succeeding workday will be used for computation of the limitation. The next succeeding workday was Monday, October 25, 1993, the date VA received the servicemember's election. The Secretary granted equitable relief under 38 U.S.C. § 503(a) allowing the servicemember a four year extension to May 2, 2006, for his MGIB program benefits. This period is based on the time, which elapsed between his date of election, October 25, 1993, and the date of BVA's notice granting his appeal, October 20, 1997.

Case #4

The veteran served on active duty from June 4, 1978, to July 31, 1990. On her last day of active service, she completed a VA claim form for special monthly compensation (SMC) based on loss of a creative organ [38 U.S.C. § 1114(k)], and turned it in to be forwarded to the appropriate VA facility. The Air Force personnel officer processing her papers mistakenly forwarded the claim form to the National Personnel Records Center (NPRC). On July 13, 1995, the servicemember submitted another claim form for special monthly compensation. The servicemember was awarded SMC on January 29, 1997, from the date of the filing of the second claim, July 13, 1995.

The veteran appealed to the Board contending that she is entitled to an earlier effective date for the SMC award. Pursuant to 38 U.S.C. § 5110(b)(1), the effective date of an award of disability compensation is the day following the date of the veteran's discharge or release. If an application is not received within this period, the effective date of an award of disability compensation is the date of receipt of the claim or the date the entitlement arose, whichever is later. The Board denied the veteran's claim for an earlier effective date because her claim for compensation was received by VA on July 13, 1995, more than one year after her July 1990 discharge from service. The Board rejected the contention that her claim was delivered to a "VA representative" when she handed it to a military personnel representative during her discharge.

In this case because the loss of creative organ occurred during the veteran's active duty service, she would have been entitled to SMC effective from the date of discharge if her VA claim form had not been erroneously forwarded to the NPRC by the U.S. Air Force. The Secretary granted the veteran equitable relief under 38 U.S.C. § 503(a) in the amount of SMC from September 1, 1990, until July 12, 1995.

Case #5

The veteran served on active duty from August 20, 1965, to January 31, 1999. He was granted Individual Unemployability with an effective date of July 3, 1996, and was scheduled for a future examination in December 1996 on the issue of whether he was permanently disabled. This future exam was cancelled, and the Agency conceded the issue of permanency, but the veteran was not notified of this determination. The lack of notification did not directly affect the veteran since he was already receiving compensation at the 100% rate due to his unemployability. However, the decision did affect his stepdaughter, who became eligible for the Dependents' Educational Assistance (DEA) program with the concession of permanency. VA has an affirmative duty to advise a veteran of changes in disability status, which may affect his benefits.

The veteran’s stepdaughter had attended college since spring 1994. The January 9, 1997, concession of permanency, which occurred when the future exam was cancelled, would have been the effective date for DEA eligibility. The stepdaughter, without any formal notification from VA, applied for DEA benefits on May 21, 1999. Under current law, the earliest that a retroactive payment could be authorized was May 21, 1998. The stepdaughter had submitted enrollment certifications, for two terms prior to the May 21, 1998, cut-off date.

The veteran was never notified of the change in his status, which would have included DEA eligibility for dependents, including eligibility for the stepdaughter from January 9, 1997. The stepdaughter incurred educational expenses from September 2, 1997, to May 8, 1998, in the amount of $3,326.26, which was earlier than the allowable period for retroactive awards. The Secretary granted equitable relief

under 38 U.S.C. § 503(a) in the amount of $3,326.26, an amount equal to the DEA benefits the stepdaughter would have been awarded for the period September 2, 1997, through May 8, 1998, had she filed the claim at an earlier date.

Case #6

On September 14, 1988, the officer submitted a Notice of Basic Eligibility (NOBE) from the Army National Guard (ARNG) with an accompanying application for benefits to VA. The NOBE was dated December 8, 1985, which was unacceptable as it was more than 120 days from the then current date. At that time, many of the NOBEs were issued at the unit level with incorrect eligibility dates, causing VA to use a Department of Defense (DoD) screen as primary proof of eligibility for the Montgomery GI Bill (MGIB-SR), with the NOBE providing secondary proof of eligibility. The officer's DoD screen indicated that he was not eligible, as he had "no 6-year contract." VA denied the requested benefits on October 28, 1988.

On or about February 23, 1990, DoD notified VA that the officer was eligible for MGIB-SR program effective August 1, 1987. VA issued a Certificate of Eligibility on April 5, 1990. On July 13, 1990, VA received enrollment certifications from an educational institution for seven quarters' enrollment for the officer from September 10, 1987, through August 17, 1989. At that time, VA was prohibited from paying benefits more than one year prior to the date the enrollment certification was received. Since the enrollment certification was received on July 13,1990, the earliest date benefits could begin was July 13, 1989.

Pursuant to a conversation with the Texas Army National Guard, the first NOBE in the officer’s file was probably issued in error because NOBEs were not issued to officers (TXARNG). The second NOBE in the officer’s file showed a date of August 1, 1987, yet was not signed by the Commanding Officer until December 8, 1989. The TXARNG was unable to provide any information as to why the NOBE was signed two years after eligibility. Members of the TXARNG are considered to be employees of the Federal Government, and their failure to provide prompt notice of eligibility constitutes administrative error.

The officer was denied education benefits from September 10, 1987, through July 12, 1989. The Secretary granted equitable relief under 38 U.S.C. § 503(a) in the sum of $2,486.16, which amount represents the MGIB-SR benefits the officer would have received for his training for the period September 10, 1987, through July 12, 1989.

Case #7

The veteran served on active duty from September 30, 1988, to June 7, 1990, when she was separated from service for the convenience of the Government. On September 11, 1995, VA received an Application for Education Benefits, an enrollment certificate from an educational institution, and a certified copy of the veteran's DD-214. VA's information concerning the veteran from September 12, 1995, indicated she was a participant in the MGIB program. Although the veteran had an initial obligation of less than three years, had served at least 20 continuous months of active duty, and was eligible for MGIB benefits, VA contacted DoD to verify the length of the veteran's initial active duty obligation. DoD was unable to verify initial obligation periods prior to 1989. The veteran was not asked to provide a copy of her enlistment contract, or any other evidence concerning the length of her initial active duty obligation. On December 2, 1995, VA denied the veteran's claim for MGIB benefits because of insufficient qualifying service. This denial was clear and unmistakable error.

The veteran contacted a VA regional office in April 1999. VA awarded her with retroactive benefits for the training in 1995, and authorized payment for training from October 4,1999, through June 6, 2000. The veteran still has 26 months, 3 days of unused MGIB benefits; however, the ten-year delimiting date was June 7, 2000. The veteran requested an extension of her delimiting date since it took VA approximately three and one-half years to correct its decision to deny the MGIB benefits. The Secretary granted equitable relief under 38 U.S.C. § 503(a) to extend the delimiting date of the veteran to give her the opportunity to use the remaining 26 months, three days of her entitlement to MGIB benefits.

Case #8

In 1996, the State of Ohio applied for a VA state-home grant for renovation projects at the State Home. The Secretary conditionally approved the grant on October 23, 1997. Under the law governing conditional approvals, the State had 180 days to meet all requirements for a grant. In a February 20, 1998, letter to VA, the Director of the State Home indicated that the State met all requirements for the grant. At this point, VHA officials should have reviewed the State's application to verify that it met all the requirements and asked the Secretary to approve the final award. This did not happen. Instead, the State completed the renovation projects without VA funding and still awaits reimbursement for its expenses.

Even though funds for this project were obligated, VA cannot now award a grant for this project. Recent revisions to the law governing state-home grants in the Veterans Millenium Health Care and Benefits Act (Public Law 106-117) established new requirements for these grants and a revised prioritizing system for grant applications. Before VA can grant any awards using the new criteria, however, the Act directs that VA award grants in accordance with a transition list of projects that

were on VA's FY 1999 and FY 2000 priority lists. The State's project was not on these priority lists, thus no award can be made to the State until the transition list is exhausted, and then only if the State's project is sufficiently high on the current priority list.

The State did not meet the initial grant requirements within the stipulated 180 days. The State's application lacked certain necessary information such as a site survey, environmental documentation, a Lobbying Disclosure Act certification, and reasonable assurance of title. Although the incomplete application was submitted within the 180 days, VA did not review the package for completeness, nor did it notify the State of grant requirements that still needed to be met. As a result, the law requires VA to deobligate the money conditionally awarded to the State and not award a grant to it during the rest of the fiscal year.

The Secretary has authority to provide equitable relief to any person when VA benefits have not been provided by reason of VA employees' administrative error. In a 1983 opinion, the General Counsel has determined that a state could be deemed a person for purposes of this authority. In a 1992 opinion, the General Counsel determined that state-home grants could be considered "benefits" for purposes of the equitable relief statute. VA has not awarded a grant to the State because of VA employees' administrative error. The Secretary granted equitable relief under 38 U.S.C. § 503(a) to the State in the amount of $637,166.00, the amount that the State spent in state-home renovations believed to be covered under VA grant programs.

Case #9

The veteran received a rating from the Detroit Regional Office on June 23, 1994, entitling him to individual unemployability (IU). At that time, a future examination was cancelled, indicating that the veteran was considered permanently and totally (P&T) disabled. The letter of June 24, 1994, which informed the veteran of his IU status, did not address the issue of P&T disability nor did it advise him that eligibility for DEA be established. A later decision dated August 6, 1996, provided a rating of 30 percent for service-connected ischemic heart disease. This included basic eligibility for DEA benefits. The award letter, dated August 8, 1996, did not mention the eligibility for DEA benefits. VA has an affirmative duty to advise a veteran of changes in disability status that may affect his or her benefits. The two award letters from 1994 and 1996 failed to address the issue of DEA benefits that directly affected the veteran's wife, who had been enrolled in an educational program seeking a Ph.D. in Nursing from January 1994.

A rating dated March 16, 1999, addressed a number of issues including the basic eligibility for DEA benefits. The narrative stated that the issue was mentioned simply because the veteran had never been notified of his spouse's eligibility for DEA benefits. The award letter of March 20, 1999, was the veteran’s first notification that his spouse was eligible for DEA benefits effective May 21, 1994.

VA received the application for DEA on October 5, 1999. A certificate of eligibility was issued for the veteran's wife on January 3, 2000. This certificate did notify the wife that DEA benefits could not be paid for any period before October 5, 1998, one year prior to the date VA received her application. Since the wife began pursuing her doctorate on January 5, 1994, she would have applied for DEA benefits in 1994, had VA notified the veteran. The Secretary granted equitable relief under 38 U.S.C. § 503(a) in the amount of $3,949.80, the tuition that the wife paid while studying for her doctorate from September 8, 1994, through October 4, 1998.

Case #10

On December 29, 1998, the veteran met with his VA counseling psychologist to develop his Individual Written Rehabilitation Plan. During this appointment, the veteran was informed that VA would pay his room and board while he attended a course in gunsmithing at an educational facility in Colorado. Acting on this information, the veteran moved from New Mexico to Colorado. On February 4, 1999, after arriving in Colorado, the veteran was informed that the information he received from his VA counselor was incorrect. Title 38 U.S.C. § 3108(e) allows payment of room and board for veterans pursuing a rehabilitation program in a specialized rehabilitation facility, however, the educational institution the veteran enrolled at was not qualified as a specialized rehabilitation facility. VA disallowed payment for the room and board.

The veteran moved from New Mexico to Colorado based on the assurance of the VA counselor that VA would pay his room and board. He relied on VA to provide accurate information before leaving New Mexico to attend his rehabilitation training. The information provided to the veteran was erroneous, and the veteran acted to his detriment in reliance on this information. The Secretary granted equitable relief under 38 U.S.C. § 503(a) to pay the veteran $1,936.00, the cost of room and board for two terms at the educational institution in Colorado.

Case #11

The veteran received a permanent and total disability rating effective May 15, 1987. VA determined that his dependent daughter was entitled to 45 months of DEA benefits, with a delimiting date of March 2, 2001, her 26th birthday. The veteran's daughter received 22 months and 10 days of DEA benefits for an AA degree program. She then received 21 months and one day of DEA benefits for a BA degree program. As of December 19, 1998, the end of the fall 1998 term, the daughter had one month and 19 days of DEA entitlement remaining. She began the spring term in January 1999 as a full-time student.

The veteran's daughter requested information from VA on two separate occasions concerning her eligibility for DEA for the spring semester. On both occasions, she was incorrectly informed that she was eligible for DEA benefits through the entire semester in spite of the fact that there was only one month and 19 days of eligibility remaining in her entitlement.

On January 28, 1999, the daughter talked to a VA representative at the San Diego Regional Office who told her that if there was one day of eligibility remaining at the beginning of a term, she would receive benefits for the full term. This statement was incorrect; 38 C.F.R. 21.3044 does not allow VA to extend a child's DEA entitlement in this manner. The VA official confirmed that he made this statement and that it was in error. Another VA employee in the San Diego Regional Office assured the mother of the daughter that VA could extend the DEA benefits. Again, this statement was confirmed by the VA official and was incorrect.

The Muskogee Regional Office received an enrollment certificate dated February 1, 1999, for the daughter's spring 1999 enrollment in college. The certificate was processed for the period December 20, 1998, through February 8, 1999, which covered the remaining one month and 19 days of eligibility. The daughter was certified at the full time rate of $485.00 per month for that period, resulting in a payment of $792.17. Her expenses for the spring semester were $1,305.00. The Secretary granted equitable relief in the amount of $512.83 under 38 U.S.C. § 503(b). This amount is the difference between the total cost of the schooling and the amount of DEA benefits actually received by the daughter.

CASE #12

The veteran served on active duty in the U.S. Army from January 7, 1993, to January 31, 1995. On January 31, 1995, the veteran received an honorable discharge for "Convenience of the Government," at which time she had served two years and 24 days of a three-year active duty obligation. On September 23, 1996, VA received the veteran's application for MGIB benefits. On November 8, 1996, VA authorized a Certificate of Eligibility entitling the veteran to 36 months of MGIB benefits.

VA received a Request for Change of Program or Place of Training on May 19, 1998, from the veteran. On June 5, 1998, and again on August 24, 1998, VA sent the veteran a letter requesting a copy of DD Form 2366. These letters were sent to the veteran's address in Kansas, and neither letter explained that the veteran might not be eligible for MGIB benefits, since evidence in the file indicated that she had not completed her first obligated period of service. The veteran did not reply since she had relocated from Kansas to Virginia and on June 30, 1998, filed an application for change of place of training to a college in Virginia. This was not received by VA until September 8, 1998, and was accompanied by an enrollment certification form for the fall semester 1998. The veteran probably did not receive the letters requesting the

DD Form 2366, and she had enrolled with the belief that she was eligible for MGIB benefits based on the Certificate of Eligibility sent to her on November 8, 1996.

On November 5, 1998, VA denied the veteran's claim for MGIB benefits because she did not comply with the June 5, 1998, letter, which she likely did not receive due to her move from Kansas to Virginia. On December 9, 1998, VA denied the veteran's claim for MGIB benefits because she did not complete her first obligated period of service. The veteran requested equitable relief based on her financial loss and her reliance on the VA's initial determination that she was eligible for MGIB benefits. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of $1,941.65, the amount the veteran expended for school in 1998 under the assumption that she was entitled to MGIB benefits while relying on VA's determination of eligibility.

Case #13

The veteran served honorably in the U.S. Air Force from January 19, 1976, to January 18, 1980, and in the U.S. Army from January 8, 1981, to March 26, 1990. Based on his Vietnam-era service, he established eligibility for education benefits under the provisions of 38 U.S.C. Chapter 34. He used 11 months and 24 days of his 45 months of chapter 34 entitlement. On December 4, 1989, VA received the veteran's request for conversion from Chapter 34 to MGIB benefits under 38 U.S.C. Chapter 30. On January 24, 1990, VA authorized MGIB payments for the veteran as a serviceman. On April 20, 1990, the VA Regional Office received a copy of Certificate of Release of Discharge from Active Duty for the veteran showing service from January 8, 1981, to March 28, 1990.

On May 1, 1990, the Regional Office amended the MGIB award for payment as a veteran. The Regional Office did not attempt to verify the break in service (i.e., from January 19, 1980, through January 7, 1981) before authorizing the MGIB award of May 1, 1990. This award showed a delimiting date of March 27, 2000, and the veteran was advised of that date in an award letter dated May 7, 1990.

Since the break in the veteran's service occurred between December 31, 1976, and July 1, 1985, 38 U.S.C. § 3031(d)(1) requires reduction of his period of eligibility by the amount of time equal to the break in service (i.e., 11 months and 20 days). Therefore the correct delimiting date was April 7, 1999, and not March 27, 2000. On June 25, 1990, the Regional Office again amended the award to make payment to the veteran as a veteran from March 29, 1990, again showing the incorrect delimiting date of March 29, 2000.

On October 21, 1999, the Buffalo Regional Office received the veteran's claim for enrollment at an educational institution for the period October 16, 1999, to December 17, 1999. The veteran states that in September 1999 he talked to

someone at VA who told him he had until April 2000 to use his MGIB benefits. On December 16, 1999, Buffalo notified the veteran that he could not receive MGIB benefits for his fall 1999 enrollment because his adjusted delimiting date was April 7, 1999.

The veteran relied to his detriment on the information supplied by VA that his delimiting date was March 29, 2000. VA informed him several times of this incorrect delimiting date, and assured him that he had until March 29, 2000, to use his MGIB benefit eligibility. The Secretary granted equitable relief in this case in the amount of $1,496.27 under the authority of 38 U.S.C. § 503(b). This amount reimbursed the veteran for expenses he incurred under the assumption that VA would pay MGIB benefits in fall 1999. His reliance was based on incorrect information provided by VA as to his delimiting date.

Case #14

The veteran has service-connected loss of vision evaluated at 100 percent with entitlement to special monthly compensation since December 1, 1953. The veteran was issued an automobile allowance on or about July 15, 1955. The evaluation for the veteran's disability rating was confirmed and continued by a rating dated October 22, 1999. That rating properly annotated, for the first time, the veteran's entitlement to the automobile allowance. On November 1, 1999, the veteran was notified that no change was warranted in his entitlement to compensation, but that the entitlement to the automobile allowance was newly established. VA received an application for the automobile allowance and in two separate instances (March 20, 2000, and March 30, 2000) informed the veteran that this allowance would be paid.

The veteran contracted for purchase of an automobile on April 7, 2000, by paying $8,293.00 and leaving a balance of $8,000.00 to be paid by VA. Acting in good faith and confidence, the automobile dealer let the veteran take possession of the vehicle based on VA's Certificate of Eligibility. On April 20, 2000, Milwaukee regional office discovered its error and contacted the veteran and the dealer. The veteran had used the automobile allowance in 1955, but could not recall the previous allowance due to extensive hospitalization at that time. Both he and the automobile dealer relied on the accuracy of the Certificate of Eligibility to their detriment. The Secretary granted the automobile dealer relief under 38 U.S.C. § 503(b) by payment of the $8,000.00 automobile allowance.

Case #15

The dependent of a veteran was granted equitable relief for DEA benefits on December 1, 1997, by the Secretary-Designate. On April 30, 1998, the Buffalo Regional Office advised the dependent of her grant of equitable relief, but did not suppress a computer-generated letter when the award was authorized. The

computer-generated letter of May 8, 1998, advised the dependent that she had until November 26, 2005, to use her DEA benefits.

On August 23, 1998, the dependent submitted a Request for Change of Program or Place of Training and a statement claiming benefits for the fall 1998 term. On September 17, 1998, the dependent submitted a enrollment certification. VA took no action on either of these documents. On November 23, 1998, the dependent inquired through Boston regional office concerning her benefits for the fall term 1998. The Buffalo Regional Office informed the Boston Regional Office that the dependent was not eligible for benefits. At this point, the dependent had not been advised that she was not eligible for benefits and that the computer-generated letter was issued in error. The dependent relied on the information provided in the letter of May 8, 1998, that she was eligible for DEA. She enrolled in a program of study and paid amount of $1,605.77 as a result of her reliance on an erroneous VA eligibility determination. The Secretary granted equitable relief under 38 U.S.C. § 503(b) in the amount of $1,605.77.

Case #16

The veteran was honorably released from active duty on August 22, 1989. He participated in the MGIB program while on active duty and had MGIB eligibility until August 23, 1999. The veteran applied for MGIB benefits in February 1998. The Muskogee Regional Office awarded benefits on February 25, 1998, with a delimiting date of August 23, 1999. In October 1998, the veteran wrote to the Muskogee Regional Office asking if his MGIB benefits could be extended until December 1999. On November 17, 1998, the Muskogee office erroneously sent the veteran a written notice that if his delimiting date occurred during a quarter or a semester in which he has enrolled, VA could extend his benefits to the end of that quarter or semester.

In August 1999, the Muskogee office received enrollment certificates from two different schools, one for the period August 17 through December 17, 1999, and the other for the period August 30, 1999, through May 26, 2000. In September, the Muskogee Regional Office awarded benefits for the period August 17 through August 22, 1999. Benefits were terminated August 23, 1999, because the veteran's eligibility period expired. The veteran requested and received written guidance from VA concerning payment of benefits beyond his delimiting date. He relied on the erroneous information provided by the Muskogee Regional Office. The Secretary granted equitable relief under 38 U.S.C. § 503(b) for $1,518.00. This amount represents benefits for the period from his delimiting date (August 23, 1999) through the end of the term (December 17, 1999).